DOCKET NO. CV-22-6128388-S	:	STATE OF CONNECTICUT
DAVID REUBEN	:	SUPERIOR COURT
	:	JUDICIAL DISTRICT OF NEW HAVEN
V.	:	AT NEW HAVEN
DANIEL COUGHLIN DBA, DC ELECTRIC, ET AL.	:	MAY 14, 2024

MEMORANDUM OF DECISION
MOTION TO DISMISS (#101)

I.

STATEMENT OF CASE AND PROCEDURAL HISTORY

In a three count complaint filed on November 29, 2022, the plaintiff alleges the following facts. On March 1, 2017, the plaintiff David Reuben was employed as an electrician laborer apprentice for the defendant Daniel Coughlin by and through his agents, employees and business entities. The plaintiff was severely injured while removing an industrial overhead door without the proper training. After affixing a pair of pliers to the rail of the wooden industrial door, the plaintiff proceeded to gradually release the door's steel cables, however, the pliers gave way, causing the steel cable to strike the plaintiff in the head and right eye with 500-800 pounds of force and pressure. The plaintiff asserts that the defendant intentionally created a dangerous condition that rendered the injuries sustained by the plaintiff with the knowledge that such harm could occur.

As a result of the accident, the plaintiff suffered a vitreous hemorrhage on the left eye, a large, linear retinal tear going through the central vision of the left eye, a choroidal rupture from blunt force trauma to the left eye, permanent loss of vision and damage to the choroid and retina

of the left eye, a fracture of the orbit of the left eye, a fractured jaw, and permanent scarring to his face. The plaintiff incurred extensive medical expenses and will likely continue to do so in the future. Additionally, his earning capacity has been and will be impaired, causing him financial loss. On March 27, 2017, the plaintiff filed a timely workers' compensation claim against his employer, DC Electric, one of the defendant's business entities. The plaintiff was paid $400,000 in worker's compensation benefits. On August 11, 2017, the defendant dissolved his business entity, DC Electric. After the dissolution of DC Electric, its assets were transferred to other business entities owned and operated solely by the defendant.

On November 10, 2017, the plaintiff commenced a civil action against Daniel Coughlin's business entity DC Electric, the plaintiff's employer. The underlying lawsuit against DC Electric, was based on the intentional tort and substantial certainty exceptions to the exclusivity provision of the worker's compensation act in that the plaintiff claimed that the defendant intentionally created a dangerous condition that caused the plaintiff's injuries with the knowledge that such harm could occur. A default judgment was entered against DC Electric in that action for failure to appear and after a hearing in damages, the court entered judgment against DC Electric for $400,000.

In the present action, the plaintiff alleges that the defendant fraudulently dissolved his company, DC Electric and transferred its assets to avoid paying the judgment the plaintiff obtained in the underlying action. Count one of the complaint alleges fraudulent transfer pursuant to General Statues §§ 52-552e and 52-552f under the Connecticut Uniform Fraudulent Transfer Act (CUFTA); count two alleges common law fraudulent transfer and count three alleges fraud.

The defendant filed an appearance on December 21, 2022. On January 18, 2023, the

defendant filed a motion to dismiss the complaint on the grounds that the plaintiff cannot succeed on his claim pursuant to General Statues §§ 52-552e and 52-552f because DC Electric was dissolved before the plaintiff brought suit and became a creditor, therefore, the dissolution cannot be considered a fraudulent transfer and this court does not have subject matter jurisdiction. The defendant further argues that the court lacks personal jurisdiction over him individually because DC Electric Co. is the only potentially proper defendant in this case and the defendant, Daniel Coughlin individually was not properly served. The motion is accompanied by a memorandum of law.

The plaintiff filed a memorandum of law in opposition to the motion to dismiss on February 17, 2023. The plaintiff argues that the court does have subject matter jurisdiction because, based upon the clear statutory language of the act that defines a "claim" and the case law interpreting that statute, his claim against the defendant under CUFTA arose prior to the dissolution. The plaintiff argues that his work related injury from which the present action arises, occurred on March 1, 2017, which pre-dates the defendant's dissolution of his company by five months. The plaintiff further argues that service upon the defendant was proper.

Oral argument on the motion was heard on December 18, 2023. The parties agreed to waive the 120 day time requirement for the court's decision until May 21, 2024.

II.

LEGAL ANALYSIS

A.

Personal Jurisdiction

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially

asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court . . . A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *Beecher* v. *Mohegan Tribe of Indians of Connecticut*, 282 Conn. 130, 134, 918 A.2d 880 (2007). "Although the filing of an appearance on behalf of a party, in and of itself, does not waive that party's personal jurisdiction claims, [a]ny defendant wishing to contest the court's jurisdiction, may do so . . . by filing a motion to dismiss within thirty days of the filing of an appearance." (Citation omitted; internal quotation marks omitted.) *Connor* v. *Statewide Grievance Committee*, 260 Conn. 435, 445, 797 A.2d 1081 (2002). See Practice Book § 10–30.

"Because a lack of personal jurisdiction may be waived by the defendant, the rules of practice require the defendant to challenge that jurisdiction by a motion to dismiss . . . If a defendant challenges the court's personal jurisdiction, the plaintiff bears the burden of proving the court's jurisdiction . . . [Furthermore], a motion to dismiss admits all facts well pleaded and invokes supporting affidavits that contain undisputed facts." (Citation omitted; internal quotation marks omitted.) *Golodner* v. *Women's Center of Southeastern Connecticut, Inc.*, 281 Conn. 819, 825–26, 917 A.2d 959 (2007).

The defendant challenges the court's personal jurisdiction because the plaintiff served "Coughlin, Daniel dba DC Electric and/or DC Electric Inc., and/or DC Electric Co. and/or DC Investment Development, LLC and/or 6 Corporate Ridge, LLC." Docket Entry No. 102. The defendant argues that the plaintiff is only a creditor of DC Electric Co., because the default judgment is only against DC Electric Co. and therefore, the plaintiff has failed to establish that the court has jurisdiction over the defendant in his individual capacity.

General Statutes § 52-57 (c) states in relevant part: "In actions against a private corporation, service of process shall be made either upon the president, the vice president, an assistant vice president, the secretary, the assistant secretary, the treasurer, the assistant treasurer, the cashier, the assistant cashier, the teller or the assistant teller or its general or managing agent or manager or upon any director resident in this state, or the person in charge of the business of the corporation or upon any person who is at the time of service in charge of the office of the corporation in the town in which its principal office or place of business is located." Here, the defendant operated DC Electric under a "doing business as" (DBA) entity. "[I]t appears well settled that the use of a fictitious or assumed business name does not create a separate legal entity . . . [and that] [t]he designation [doing business as] . . . is merely descriptive of the person or corporation who does business under some other name. . . . [I]t signifies that the individual is the owner and operator of the business whose trade name follows his, and makes him personally liable for the torts and contracts of the business." (Emphasis added.) *Monti* v. *Wenkert*, 287 Conn. 101, 135, 947 A.2d 261 (2008); see also *Izzo* v. *Quinn*, 170 Conn. App. 631, 641 n.2, 155 A.3d 315 (2017) (the plaintiff, Izzo, is the real party interest and his "doing business as" New Haven Drywall is merely descriptive).

When serving process upon an individual in the state, General Statutes § 52-57 (a) provides: "Except as otherwise provided, process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state." "For service pursuant to § 52-57 (a), 'the usual place of abode' presumptively is the defendant's home at the time when service is made." *Jimenez* v. *DeRosa*, 109 Conn. App. 332, 338, 951 A.2d 632 (2008). Here, the defendant was properly

served in hand at his usual place of abode. See Marshal's Ret., Docket Entry No. 100.3.

Additionally, General Statutes § 33-884 (b) (7) provides that dissolution of a corporation does not terminate the authority of the registered agent of the corporation. "Nevertheless, even if the [defendant's company] [was] effectively dissolved prior to the commencement of the present case, it is still subject to the court's jurisdiction. General Statutes § 34-214 authorizes claims against a dissolved limited liability company or its members under certain circumstances." (Citation omitted; emphasis added; internal quotation marks omitted.) *Desir* v. *Clanton*, Superior Court, judicial district of New London, Docket No. CV-09-5011887-S (April 30, 2010, Cosgrove, J.) (49 Conn. L. Rptr. 740). The defendant was the only member/officer of DC Electric, and therefore, he was properly served as the sole agent of the company, and this court retains personal jurisdiction over the defendant. See *Dillon* v. *Sanderson*, Superior Court, judicial district of Windham, Docket No. CV-17-5007313-S (January 31, 2018, *Cole-Chu, J.*) (65 Conn. L. Rptr. 834) ([s]ervice of process upon a corporation may be made upon its agent). This court therefore has personal jurisdiction over the defendant Daniel Coughlin, in his individual capacity.

B.

Subject Matter Jurisdiction

"[A] motion to dismiss pursuant to Practice Book § 10-30 (a) (1) is the appropriate procedure for challenging subject matter jurisdiction." *Machado* v. *Taylor*, 326 Conn. 396, 401, 163 A.3d 558 (2017). "Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it . . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction. . . . The subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a

party, or by the court sua sponte, at any stage of the proceedings. . . .” (Internal quotation marks omitted.) *Keller* v. *Beckenstein*, 305 Conn. 523, 531-32, 46 A.3d 102 (2012). “Once the question of subject matter jurisdiction has been raised, cognizance of it must be taken and the matter passed upon before [the court] can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction.” (Internal quotation marks omitted.) *Schaghticoke Tribal Nation* v. *Harrison*, 264 Conn. 829, 839 n.6, 826 A.2d 1102 (2003).

Our Supreme Court has indicated that there is a distinction between a court’s subject matter jurisdiction and its statutory authority to act. “[A]lthough related, the court’s authority to act pursuant to a statute is different from its subject matter jurisdiction. The power of the court to hear and determine, which is implicit in jurisdiction, is not to be confused with the way in which that power must be exercised in order to comply with the terms of the statute. . . . [T]he distinction between challenges to the trial court’s subject matter jurisdiction and challenges to the exercise of its statutory authority is not always clear.” (Citation omitted; internal quotation marks omitted.) *In re Jose B.*, 303 Conn. 569, 573-74, 34 A.3d 975 (2012), superseded by statute on other grounds as stated in *In re Henry P. B.-P.*, 327 Conn. 312, 335, 173 A.3d 928 (2017). “[T]he failure to allege an essential fact under a particular statute goes to the legal sufficiency of the complaint, not to the subject matter jurisdiction of the trial court.” Id., 579.

In *In re Jose B.*, the Supreme Court acknowledged the “ongoing confusion as to whether the failure to plead or prove an essential fact [for purposes of invoking a statutory remedy] implicates the trial court’s subject matter jurisdiction or its statutory authority.” Id., 572. In *Board of Education* v. *Commission on Human Rights & Opportunities*, 344 Conn. 603, 633-34, 280 A.3d 424 (2022), however, the Supreme Court emphasized that its conclusion in *In re Jose*

B. was that "a claim that a party has failed to allege or to establish an element of a statutory remedy implicates the tribunal's statutory authority and the legal sufficiency of the complaint, not the tribunal's subject matter jurisdiction." The court also clarified that it had "implicitly overruled the cases that had reached the contrary conclusion on that point. . . ." Id., 634 n.27.

In *Board of Education*, the Supreme Court noted that the complaint alleged the board had violated General Statutes § 46a-64 by discriminating against a student "on the basis of his disabilities in a place of public accommodation." Id., 634. The board argued that "because a public school is not a place of public accommodation as a matter of law, the commission lacked subject matter jurisdiction." (Emphasis in original.) Id. The court disagreed, however, concluding that "[s]uch a claim is within the class of cases that the commission has authority or competence to decide . . . . [T]herefore . . . the commission had subject matter jurisdiction to entertain the complaint." Id. The court additionally concluded that "[i]n the cases that we cited in our discussion in *In re Jose B.* regarding the distinction between statutory authority and subject matter jurisdiction, the alleged jurisdictional deficiencies also involved questions of law. We concluded that the trial court's jurisdiction was not implicated in any of these cases, but, instead, the claims implicated the trial court's statutory authority and the legal sufficiency of the complaints. . . . We conclude, therefore, that the board's claim that the trial referee incorrectly determined that a public school is a place of public accommodation is not reviewable because it does not implicate the commission's subject matter jurisdiction." (Citation omitted; footnote omitted.) Id., 634-35. Further, the Appellate Court later relied on *Board of Education* when it concluded in *L.L.* v. *M.B.*, 216 Conn. App. 731, 749, 286 A.3d 489 (2022), that "the trial court's determination that the plaintiff did not fall within the definition of '[f]amily or household

member' as set forth in [General Statutes] § 46b-38a (2), did not implicate the subject matter jurisdiction of the court."

In the present case the defendant argues that the plaintiff cannot assert a cause of action under CUFTA because the defendant's company was dissolved before the plaintiff brought suit and became a creditor, and therefore this court does not have subject matter jurisdiction over the claim. The defendant essentially argues that the plaintiff was not a creditor as defined under the act and therefore cannot legally establish a claim under CUFTA. The question of whether the plaintiff's statutory claim for fraudulent transfer falls within CUFTA does not implicate subject matter jurisdiction but instead implicates the court's statutory authority and therefore goes to the legal sufficiency of the plaintiff's claims.

The plaintiff alleges that the defendant Coughlin fraudulently dissolved his business entity DC Electric and transferred assets to other business entities of which he is the only member/owner, to avoid paying the judgment the plaintiff obtained in the underlying action. Thus, the claim advanced by the plaintiff is within the class of cases that the court has authority or competence to decide. See *Board of Education* v. *Commission on Human Rights & Opportunities*, supra, 344 Conn. 633 ("Once it is determined that a tribunal has authority or competence to decide the class of cases to which the action belongs, the issue of subject matter jurisdiction is resolved in favor of entertaining the action. . . . [T]he question of whether the action belongs to the class of cases that the tribunal has authority to decide is [s]eparate and distinct from . . . the question of whether a [tribunal] . . . properly exercises its statutory authority to act." (Citation omitted; internal quotation marks omitted.)).

As previously noted, the defendant argues that the plaintiff was not a creditor prior to the dissolution of the defendant's company and alleged fraudulent transfer. More specifically, the

defendant argues that under CUFTA a transfer is only fraudulent as to a creditor if the creditor's claim arose before the transfer was made or the obligation was incurred. Thus, whether the defendant fraudulently transferred assets in violation of CUFTA does not implicate the subject matter jurisdiction of the court. Because the defendant's challenge to count one, is one of statutory authority and not subject matter jurisdiction, it is not an issue properly addressed through a motion to dismiss but must instead be raised in a motion to strike addressing the legal sufficiency of that count. Therefore, the court will treat the defendant's motion to dismiss for lack of subject matter jurisdiction as a motion to strike. See *Pfadt* v. *Greater Community Health Mental Center*, Superior Court, judicial district of Fairfield, Docket No. 326263 (February 26, 1996, *Levin, J.*) (the court treated the defendants' motion to dismiss as a motion to strike).

"A motion to strike . . . rather than a motion to dismiss, is the proper vehicle to attack the legal sufficiency of a complaint." *Caruso* v. *Bridgeport*, 285 Conn. 618, 629–30, 941 A.2d 266 (2008). "[A] motion to dismiss is not designed to test the legal sufficiency of a complaint in terms of whether it states a cause of action. That should be done, instead, by a motion to strike . . . the practical difference being that if a motion to strike is granted, the party whose pleading is stricken is given an opportunity to replead in order to avoid a harsh result." (Internal quotation marks omitted.) *Pratt* v. *Old Saybrook*, 225 Conn. 177, 185, 621 A.2d 1322 (1993). "[T]he primary difference between the granting of a motion to dismiss for lack of subject matter jurisdiction and the granting of a motion to strike is that only in the latter case does the plaintiff have the opportunity to amend its complaint. See Practice Book § [10–44]." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *Alves*, 262 Conn. 480, 501, 815 A.2d 1188 (2003), cert. denied, 308 Conn. 929, 64 A.3d 120 (2013).

"The role of the trial court [in ruling on a motion to strike] [is] to examine the

[complaint], construed in favor of the plaintiffs, to determine whether the [pleading party has] stated a legally sufficient cause of action." (Internal quotation marks omitted.) *Dodd* v. *Middlesex Mutual Assurance Co.*, 242 Conn. 375, 378, 698 A.2d 859 (1997). "When the issues concern the granting of a motion to strike, [the court is] limited to and must accept as true the facts alleged in the . . . complaint." (Internal quotation marks omitted.) *Craig* v. *Driscoll*, 262 Conn. 312, 315 n. 4, 813 A.2d 1003 (2003). "[I]f facts provable in the complaint would support a cause of action, the motion to strike must be denied." (Internal quotation marks omitted.) *Rizutto* v. *Davidson Ladders, Inc.*, 280 Conn. 225, 229, 905 A.2d 1165 (2006).

C.

Count One – Connecticut Uniform Fraudulent Transfer Act

The defendant argues that the plaintiff cannot assert a cause of action pursuant to §§ 52-552e and 52-552f because the defendant's company was dissolved before the plaintiff brought suit and became a creditor. As the court previously discussed, the defendant is essentially claiming that the plaintiff has failed to allege facts sufficient to establish that the defendant committed a fraudulent transfer under CUFTA because the dissolution of the defendant occurred prior to the commencement of the action and judgment against the defendant.

"'The Connecticut Uniform Fraudulent Transfer Act (CUFTA or act), General Statutes §§ 52-552a through 52-552l, provides relief to unsecured *creditors* when there has been a transfer of a debtor's assets and the circumstances establish that the transfer was fraudulent.' (Emphasis added.) *Geriatrics, Inc.* v. *McGee*, 332 Conn. 1, 3, 208 A.3d 1197 (2019). 'CUFTA permits creditors to set aside or void certain transfers of a debtor's assets when those transfers are made with the purpose of frustrating the creditor's ability to collect its debt. General Statutes § 52-552a et seq. Not all transfers that frustrate creditors are fraudulent transfers under CUFTA, however.

Instead, CUFTA sets out four distinct bases for fraudulent transfer liability, each with its own distinct elements. See General Statutes §§ 52-552e and 52-552f." Id., 33 (*D'Auria, J.*, concurring and dissenting).

Although the plaintiff does not specifically enumerate which statutory provisions pursuant to which he brings his fraudulent transfer claims, when reviewing the allegations in the complaint, it appears that the plaintiff that the claims are brought pursuant to §§ 52-552e (a) (1), (a) (2) (A), (a) (2) (B) and 52-552f of the act.

Section 52-552e states: "(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, if the creditor's claim arose before the transfer was made or the obligation was incurred and if the debtor made the transfer or incurred the obligation: (1) With actual intent to hinder, delay or defraud any creditor of the debtor; or (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due. (b) In determining actual intent under subdivision (1) of subsection (a) of this section, consideration may be given, among other factors, to whether: (1) The transfer or obligation was to an insider, (2) the debtor retained possession or control of the property transferred after the transfer, (3) the transfer or obligation was disclosed or concealed, (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit, (5) the transfer was of substantially all the debtor's assets, (6) the debtor absconded, (7) the debtor removed or concealed assets, (8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the

amount of the obligation incurred, (9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred, (10) the transfer occurred shortly before or shortly after a substantial debt was incurred, and (11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor."

"To establish a fraudulent transfer under § 52-552e (a) (1), the plaintiff must show: (1) his claim arose before the challenged transfer; and (2) the debtor made the transfer or incurred the obligation with actual intent to hinder, delay or defraud any creditor of the debtor. As stated above, Section 52-552e (b) provides factors that the court may consider in determining actual intent.

"To establish a constructive fraudulent transfer under § 52-552e (a) (2), the plaintiff must prove: (1) his claim arose before the challenged transfer; and (2) the debtor did not receive a reasonably equivalent value in exchange for the transfer or obligation, 'and the debtor (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due."' *Doe* v. *Fasold*, Superior Court, judicial district of New Britain at New Britain, Docket No. HHBCV-21-5030277-S (June 29, 2023, *Knox, J.*).

Section 52-552f provides: "(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation. (b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the

transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time and the insider had reasonable cause to believe that the debtor was insolvent."

"To establish a fraudulent transfer under subsection (a) of § 52-552f, the plaintiff must show: (1) her claim arose before the challenged transfer; (2) the debtor did not receive equivalent value for the transfer; and (3) the debtor became insolvent as a result of the transfer, or was insolvent at the time of the transfer. The plaintiff must satisfy all three prongs to demonstrate a fraudulent transfer under the act." *Doe* v. *Fasold*, supra, Superior Court, Docket No. HHBCV-21-5030277-S. Thus, in order to establish a legally sufficient claim under the statute, first, there must be a debtor and a creditor and the creditor's claim must have arisen before the transfer was made or the obligation incurred. Second, the transfer must have been with actual or constructive intent.

" 'Debtor' means a person who is liable on a claim." General Statutes § 52-552b; "'Creditor' means a person who has a claim." General Statutes § 52-552b (4); and claim means "a right to payment, whether or not the right is reduced to judgment, liquidated, unliqudated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured." General Statutes § 52-552b (3).

Sections 52–552e and 52-552f require that in order to bring a statutory fraudulent transfer cause of action, the plaintiff must have been a present creditor of the alleged transferor. "CUFTA applies as against transferors and transferees of fraudulent transfers made by a debtor." *All Metals Industries, Inc.* v. *TD Banknorth*, Superior Court, judicial district of Middlesex, Docket No. CV 07 5002464 (February 27, 2008, *Aurigemma, J.*). "Under subsection (a)(2) of § 52–552e a creditor may prove a fraudulent transfer by establishing that it was an existing creditor of the debtor at the time of the transfer . . ." (Internal quotation marks omitted.) *O'Malley* v.

Moghul, Superior Court, judicial district of Tolland, Docket No. CV 03 0080455 (December 19, 2003, *Scholl, J.*).

The defendant argues that because DC Electric was dissolved on August 11, 2017, prior to when the plaintiff initiated the present suit, he cannot assert a cause of action under §§ 52-552e and 52-552f. The plaintiff argues that his claim arose when he was injured on March 1, 2017, which pre-dates the dissolution of DC Electric and therefore he was creditor that had a claim against the defendant debtor prior to the dissolution.

The predicate facts upon which the plaintiff relied to commence the civil suit against DC Electric in the underlying action, are that on March 1, 2017, the plaintiff was severely injured when he was ordered by the defendant, by and through his agents, employees and business entities to remove a fourteen foot industrial overhead door with no assistance, when he had not been previously trained to remove the door. The plaintiff further alleged an exception to the exclusivity provision of the worker's compensation act, in that the defendant intentionally created a dangerous condition that rendered the injuries sustained by the plaintiff substantially certain and/or with the knowledge such harm could occur. As a result of DC Electric's failure to appear in the underlying lawsuit, a default was entered against it and after a hearing in damages, judgment was entered against DC Electric for $400,000. The plaintiff alleges these same facts in the present suit against Coughlin.

Resolution of the defendant's motion to strike count one turns on the definition of "claim" as defined under CUFTA and whether plaintiff's "claim" as defined under the act was the commencement of the underlying lawsuit in November 2017, which occurred after the dissolution, or the date on which the plaintiff was injured, March 1, 2017, which occurred before the dissolution.

Our Supreme Court in *Canty* v. *Otto*, 304 Conn. 546, 41 A.3d 280 (2012), addressed the definition of a "claim" pursuant to CUFTA. In *Canty*, the Administratrix of a homicide victim's estate brought an action against the alleged perpetrator's (Otto) former wife (defendant) to recover as a creditor under CUFTA. The Administratrix also applied for a prejudgment remedy. The trial court denied the wife's motion to dismiss which alleged that a dissolution judgment could not be collaterally attacked through a claim under CUFTA. In addition, the trial court awarded prejudgment remedy. The defendant wife appealed.

At issue on appeal, was, inter alia, the disposal of certain assets from one spouse to another, which was undertaken both informally, as well as formally, under the guise of a dissolution action. Also at issue was whether the administratrix's underlying action pursuant to CUFTA, was an impermissible collateral attack on the dissolution judgment.

The defendant's husband (Otto) was being sued in a wrongful death action for the alleged murder of his mistress (Smith). Otto was convicted of Smith's murder. The questionable transfers took place after the death of Smith. The trial court determined that the plaintiff's CUFTA claim arose on the date Smith was murdered, which was prior to both Otto transferring his land in Massachusetts to the defendant and to the defendant filing for divorce against Otto. The Supreme Court agreed with the trial court's conclusion that the plaintiff's claim under CUFTA arose *on the date of the injury* in the underlying action. In affirming the trial court, and concluding that distribution of marital property in a dissolution decree should be subject to collateral attack in a claim under CUFTA, the court also addressed the definition of a claim and when a "claim" arises under CUFTA: "The conclusion that distribution of marital property in a dissolution decree should be subject to attack in a claim under [CUFTA] is also supported by 49 C.J.S. 546, Judgments § 452 (2009), which allows for the collateral attack of a judgment by a

creditor whose rights will be affected by the enforcement of that judgment on the ground that the judgment is fraudulent as to the creditor. In order to collaterally attack the judgment, § 452 requires the creditor to prove both that there was fraud designed to injure the creditor, and that the creditor's rights must have accrued before the judgment was entered. In the present case, the plaintiff had a 'claim' against Otto prior to the transfer of assets from Otto to the defendant. Pursuant to the act [CUFTA], a ' '[c]laim' means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.' General Statutes § 52–552b (3). The 'legislature chose to adopt a very broad definition of the term 'claim' . . . [and therefore] a plaintiff's claim [arises] on the date of the injury in the underlying action.' *Davenport* v. *Quinn*, 53 Conn.App. 282, 304, 730 A.2d 1184 (1999). Thus, we agree with the trial court that 'the plaintiff's . . . claim [under the act] arose on the date Smith (mistress) was murdered, which was prior to both Otto transferring his land in Massachusetts and to the defendant filing for divorce against Otto.' See 50 C.J.S. 65, Judgments § 511, (2006) ('[a creditor], whose rights or claims would be injuriously affected by enforcement of a judgment against [his] debtor, [may] impeach its validity on the ground that it is fraudulent'). Accordingly, 49 C.J.S., supra, p. 546, also supports our conclusion that the plaintiff has standing to bring her claim under the act." *Canty* v. *Otto*, supra, 304 Conn. 546, 560-61.

Here, the plaintiff's injury occurred on March 1, 2017. Thus, the plaintiff's claim, under CUFTA, and as enunciated in *Canty*, arose on the date the plaintiff was injured which pre-dates the dissolution of the defendant's company by five months. Accordingly, the defendant's motion to strike count one is denied.

D.

Count Two – Common Law Fraudulent Conveyance

"[T]he Connecticut Fraudulent Transfer Act . . . is essentially a codification of the common law of fraudulent conveyances. *Molitor* v. *Molitor*, 184 Conn. 530, 535, 440 A.2d 215 (1981). The purpose underlying both the common law and the statutory fraudulent conveyance action is to ensure the Court's ability to invalidate property transfers that are clearly fraudulent as to present creditors. *National Loan Investors, L.P.* v. *LAN Associates XII LLP*, Superior Court, complex litigation docket at New Britain, No. X03 CV 99 0495407 (June 28, 2002, *Aurigemma, J.*). In other words, the general purpose of fraudulent transfer law . . . is to prevent [a] debtor from taking deliberate action to hinder, delay, or defraud his creditors by providing a remedy to creditors and potential creditors to undo the detrimental effects of a fraudulent transfer." (Internal quotation marks omitted.) *In re Raytech Corp.*, 241 B.R. 790, 794 (Bankr.D.Conn.1999). See also, 37 Am.Jur.2d 520, Fraudulent Conveyances and Transfers § 1 (2001)." *Breen* v. *Judge*, Superior Court, judicial district of Hartford, Docket No. CV 07 4033896 (April 2, 2009, *Domnarski, J.*), aff'd, 124 Conn.App. 147, 4 A.3d 326 (2010).

"A party alleging a fraudulent transfer or conveyance under the common law bears the burden of proving either: (1) that the conveyance was made without substantial consideration and rendered the transferor unable to meet his obligations or (2) that the conveyance was made with a fraudulent intent in which the grantee participated. . . . The party seeking to set aside a fraudulent conveyance need not satisfy both of these tests. . . . These are also elements of an action brought pursuant to . . . §§ 52-552e (a) and 52-552f (a). . . . Indeed, although [UFTA] provides a broader range of remedies than the common law . . . [it] is largely an adoption and clarification of the standards of the common law of [fraudulent conveyances] . . . ." (Citations omitted; footnote

omitted; internal quotation marks omitted.) *Certain Underwriters at Lloyd's, London* v. *Cooperman*, 289 Conn. 383, 394–95, 957 A.2d 836 (2008). Accordingly, our Supreme Court has considered claims of fraudulent transfer based on the common law and claims based on [C]UFTA together. See id.; see also *National Loan Investors, L.P.* v. *World Properties, LLC*, 79 Conn.App. 725, 731 n.8, 830 A.2d 1178 (2003); cert. denied, 267 Conn. 910, 840 A.2d 1173 (2004) ("[o]ur analysis proceeds under the CUFTA, but a common-law analysis would reach the same result"). Count two of the plaintiff's complaint incorporates paragraphs 1-35 of count one and alleges in relevant part: "33. The defendant Daniel Coughlin exercised his complete control over the business entities he owns and operates and used that control to dissolve the registered business DC Electric Company and to transfer its assets prior to a judgment entering against it and to avoid legal and financial responsibility to the plaintiff. The defendant Daniel Coughlin committed a fraud by dissolving the corporate entity known as DC Electric Company, transferring assets/closing bank accounts to create the false appearance that DC Electric Company ceased to function and/or exist, yet DC Electric Company continued to exist and function as an ongoing business even to today. The defendant Daniel Coughlin committed a fraud to deprive the plaintiff of his judgment being satisfied. 34. The defendant Daniel Coughlin, as sole member of the limited liability companies and as the sole proprietor of unregistered/ unincorporated business entities, enjoyed a total, unified interest over all the business entities he owns and operates. Each of the aforementioned business entities, solely owned and operated by the defendant Daniel Coughlin are not independent of each other. 35. The above described fraudulent and dishonest conduct of the defendant Coughlin is continuous and ongoing and purposely designed to prevent the plaintiff Reuben from being paid . . . 36. The aforementioned acts/omissions of the defendant Daniel Coughlin effected a conveyance of the assets of DC

Electric Company without substantial consideration from the transferee business entity and with a fraudulent intent on the part of the defendant Daniel Coughlin as both grantor and the grantee. In viewing these allegations broadly and realistically and in light most favorable to sustaining the legal sufficiency of count two, the plaintiff has sufficiently pled a claim for common law fraudulent conveyance. The plaintiff has sufficiently pled facts to demonstrate that Daniel Coughlin's dissolution of DC Electric and the transfer of assets to other businesses were made without substantial consideration and rendered the transferor unable to meet his obligations or (2) that the conveyance was made with a fraudulent intent in which the grantee, Daniel Coughlin, participated. As to the first element, the plaintiff specifically alleges that "Coughlin committed a fraud by dissolving the corporate entity known as DC Electric Company, transferring assets/closing bank accounts to create the false appearance that DC Electric Company ceased to function and/or exist, yet DC Electric Company continued to exist and function as an ongoing business even today [and that these] "acts were done with the intent to prevent the judgment held by the plaintiff from being taken by legal process and with the former intent of defrauding the plaintiff and preventing hin from securing satisfaction of his Judgement." Pl. Compl., ¶ 33.

Although the plaintiff is only required to plead and prove one of the two elements for a common law fraudulent conveyance, the allegations further support the claim that the dissolution and transfer of assets to other businesses were made with a fraudulent intent in which the grantee participated. The plaintiff specifically alleges facts which demonstrate Coughlin's intent, but also that Coughlin, as grantor fraudulently transferred assets to other businesses, and as grantee participated in the fraudulent dissolution and transfer of assets of DC Electric to other businesses that he owns and operates, and over which he "exercise[s] complete control." See Pl. Compl., ¶¶ 29 (f), 34, 35 and 36. Accordingly, the motion to strike count two is denied.

E.

Count Three- Common Law Fraud

Count three of the plaintiff's complaint alleges common law fraud against the defendant. The defendant, neither in his motion nor in his reply, addressed or discussed why the court lacks subject matter jurisdiction over the plaintiff's common law fraud claim. Neither did the defendant address the legal sufficiency of count three. The defendant's arguments were mainly focused on his claim that the alleged obligation owed to the plaintiff did not arise until after the dissolution of the defendant's company. As the court has determined that the plaintiff's claim arose prior to the dissolution, and the defendant failed to address the plaintiff's common law fraud claim, the motion to strike count three is denied. See *Willow Springs Condominium Assn., Inc.* v. *Seventh BRT Development Corp.*, supra, 245 Conn. 1, 38, 717 A.2d 77 (1998) ("[i]ssues that are not adequately briefed are deemed abandoned").

CONCLUSION

For the reasons set forth above, the motion to strike the plaintiff's complaint is denied in its entirety.

Juris No. 421279
Wilson, J.